IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/06/2004

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THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

Habeas Corpus Petition No.251 of 2004

Kallumai @ Selvam .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai-9.

2. The District Magistrate &
The District Collector
Theni District, Theni. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V. Shanmugasundaram

For Respondents : Mr. Abudukumar Rajaratnam
Additional Public Prosecutor

:O R D E R
(The order of the Court was made by
P.D.DINAKARAN, J.)

The petitioner, who is the detenu, challenges the order of detention dated 5.9.2003 dubbing him as boot-legger, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, DrugOffenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982.

2. On 25.8.2003 at Petchiamman Koil Street, Thevaram, Theni District, the petitioner was found to be in possession of 60 litres of I.D. Arrack in a tractor tube and 4 litres of I.D. Arrack in 10 litre black colour plastic can. A case was registered in PEW Cr.No.205/2003 under Section 4(1)(i), 4(1)(aa) and 4(1-A) of TNP Act read with 328, IPC, on the file of Uthamaplalayam Prohibition Enforcement Wing. Taking note of the above ground

case and three adverse cases of like nature, the impugned order of detention was passed.

3. The learned counsel for the petitioner assails the impugned order of detention on the only ground of non application of mind on the part of the detaining authority while passing the order of detention, wherein he had stated in the grounds of detention that there is an imminent possibility of the detenu coming out on bail, when the fact remains that the detenu had not preferred any bail application.

4. Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order, vide Shashi Aggarwal v. State of U.P., (1988) 1 SCC 436, at page 440.

5. "Imminent possibility" is relevant to the present circumstances and not relating to the future. The detaining authority has passed the impugned order of detention stating that there is an imminent possibility of coming out on bail, without any basis for such a possibility to occur in future, particularly, when the detenu has not resorted to file any bail application, which would reflect the non application of mind of the detaining authority to the actual situation of the case. Therefore, the impugned order of detention is vitiated and accordingly, the same is quashed. The detenu Kallumai @ Selvam is directed to be set at liberty forthwith, unless he is required in connection with any other case.

The Habeas Corpus petition is allowed.

Index : Yes
Internet : Yes

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To

1. The Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai-9.

2. The District Magistrate &
The District Collector, Theni District, Theni.

3. The Public Prosecutor, High Court, Madras.